

PATENT COOPERATION TREATY

From the
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

PCT

To:

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NOTIFICATION OF TRANSMITTAL OF
THE INTERNATIONAL PRELIMINARY
REPORT ON PATENTABILITY

(PCT Rule 71.1)

Date of mailing
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06.02.2006

Applicant's or agent's file reference
2004P21395WO

IMPORTANT NOTIFICATION

International application No.
PCT/EP2005/002823

International filing date (day/month/year)
15.03.2005

Priority date (day/month/year)
16.03.2004

Applicant
BBC TECHNOLOGY HOLDINGS LIMITED

1. The applicant is hereby notified that this International Preliminary Examining Authority transmits herewith the international preliminary report on patentability and its annexes, if any, established on the international application.
2. A copy of the report and its annexes, if any, is being transmitted to the International Bureau for communication to all the elected Offices.
3. Where required by any of the elected Offices, the International Bureau will prepare an English translation of the report (but not of any annexes) and will transmit such translation to those Offices.
4. **REMINDER**

The applicant must enter the national phase before each elected Office by performing certain acts (filing translations and paying national fees) within 30 months from the priority date (or later in some Offices) (Article 39(1)) (see also the reminder sent by the International Bureau with Form PCT/IB/301).

Where a translation of the international application must be furnished to an elected Office, that translation must contain a translation of any annexes to the international preliminary report on patentability. It is the applicant's responsibility to prepare and furnish such translation directly to each elected Office concerned.

For further details on the applicable time limits and requirements of the elected Offices, see Volume II of the PCT Applicant's Guide.

The applicant's attention is drawn to Article 33(5), which provides that the criteria of novelty, inventive step and industrial applicability described in Article 33(2) to (4) merely serve the purposes of international preliminary examination and that "any Contracting State may apply additional or different criteria for the purposes of deciding whether, in that State, the claimed inventions is patentable or not" (see also Article 27(5)). Such additional criteria may relate, for example, to exemptions from patentability, requirements for enabling disclosure, clarity and support for the claims.

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PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference 2004P21395WO	FOR FURTHER ACTION		See Form PCT/PEA416
International application No. PCT/EP2005/002823	International filing date (day/month/year) 15.03.2005	Priority date (day/month/year) 16.03.2004	
International Patent Classification (IPC) or national classification and IPC H04L29/08			
Applicant BBC TECHNOLOGY HOLDINGS LIMITED			
<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 8 sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p style="margin-left: 20px;">a. <input checked="" type="checkbox"/> sent to the applicant and to the International Bureau a total of 7 sheets, as follows:</p> <p style="margin-left: 40px;"><input checked="" type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p style="margin-left: 40px;"><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p style="margin-left: 20px;">b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>			
<p>4. This report contains indications relating to the following items:</p> <p><input checked="" type="checkbox"/> Box No. I Basis of the opinion</p> <p><input type="checkbox"/> Box No. II Priority</p> <p><input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p><input type="checkbox"/> Box No. IV Lack of unity of invention</p> <p><input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p><input type="checkbox"/> Box No. VI Certain documents cited</p> <p><input checked="" type="checkbox"/> Box No. VII Certain defects in the international application</p> <p><input checked="" type="checkbox"/> Box No. VIII Certain observations on the international application</p>			
Date of submission of the demand 10.01.2006		Date of completion of this report 06.02.2006	
Name and mailing address of the international preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465		Authorized Officer Homan, P Telephone No. +49 89 2399-6990 	

**INTERNATIONAL PRELIMINARY REPORT
ON PATENTABILITY**

International application No.
PCT/EP2005/002823

Box No. I Basis of the report

1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This report is based on translations from the original language into the following language , which is the language of a translation furnished for the purposes of:
- ☐ international search (under Rules 12.3 and 23.1(b))
 - ☐ publication of the international application (under Rule 12.4)
 - ☐ international preliminary examination (under Rules 55.2 and/or 55.3)
2. With regard to the **elements*** of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report):*

Description, Pages

1-34 as originally filed

Claims, Numbers

1-42 received on 10.01.2006 with letter of 06.01.2006

Drawings, Sheets

1/4-4/4 as originally filed

- ☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing

3. ☐ The amendments have resulted in the cancellation of:
- ☐ the description, pages
 - ☐ the claims, Nos.
 - ☐ the drawings, sheets/figs
 - ☐ the sequence listing (*specify*):
 - ☐ any table(s) related to sequence listing (*specify*):
4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
- ☐ the description, pages
 - ☐ the claims, Nos.
 - ☐ the drawings, sheets/figs
 - ☐ the sequence listing (*specify*):
 - ☐ any table(s) related to sequence listing (*specify*):

* If item 4 applies, some or all of these sheets may be marked "superseded."

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Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	1-42
	No: Claims	
Inventive step (IS)	Yes: Claims	
	No: Claims	1-42
Industrial applicability (IA)	Yes: Claims	1-42
	No: Claims	

2. Citations and explanations (Rule 70.7):

see separate sheet

Box No. VII Certain defects in the international application

The following defects in the form or contents of the international application have been noted:

see separate sheet

Box No. VIII Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

see separate sheet

**INTERNATIONAL PRELIMINARY
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Re Item V

**Reasoned statement with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement**

1 Reference is made to the following documents:

D1: EP-A-0 715 247

D2: US 2003/028623 A1

2 The subject-matter of claim 1 does not fulfill the requirement of inventive step in the sense of Article 33(3) PCT:

2.1 Document D2 discloses a method of distributing rights-managed media data items to users (fig. 1), wherein the media data item has associated rights information, including a time-limited availability attribute, the method comprising, for each media data item:

in a seeding phase:

- storing the media data item ("origin server 112"; par. [43], [45]);
- receiving requests for the media data item from a plurality of users ("a request for content"; par. [46]);
- transmitting the requested media data item to the plurality of users (implicit feature of "request content from peer", par. [46], in combination with "origins are assigned lower priority than peers", par. [88]);
- storing information identifying the media data item, the associated rights information for the media data item and a list of users who have received the media data item ("peer becomes a potential candidate server", par. [46]);

in a peer-to-peer phase:

- receiving requests for the media data item from at least one further user ("a request for content"; par. [46]);
- compiling a list of sources of the media data item in a peer-to-peer network based on the list of users who have received the media data item ("a list of potential candidates"; par. [46]);
- transmitting the list of sources to the at least one further user to enable the user

to obtain the requested media data item via the peer-to-peer network ("send a list of potential candidates", par. [46]);

- storing information identifying the requested media data item, the at least one further user and the rights-information of the requested media data item ("peer becomes a potential candidate server", par. [46]);

list of sources of the media data item is prioritised based on the estimated topographical distance of the source from the user in the network, preferably estimated based on the respective Internet Protocol addresses of the source and the user (par. [27]).

- 2.2 The subject matter of claim 1 differs from the disclosure of document D2 in that each media data item has associated rights information, whereby the availability of the requested media data item is determined based on the associated rights information, including a time-limited availability attribute.
- 2.3 The resulting technical problem is how to determine the availability of the requested rights-managed media data item.
- 2.4 In order to solve the above-mentioned technical problem a person skilled in the art of communication networks would use document D1, which discloses a system for controlling the distribution of rights-managed media data items. D1 (page 4, lines 3-8) discloses a step of determining the availability of the requested media data item based on the associated rights information. D1 (page 6, table 1) also discloses that a time-limited availability attribute is part of the associated rights information. Finally, D1 (page 6, lines 39-51) discloses how rights information are attached to media data items. Thus, no inventive step is required for the skilled person to combine teachings of documents D1 and D2 in order to solve the above-mentioned problem.

Consequently, the subject-matter of claim 1 does not involve an inventive step.

- 3 The subject-matter of claim 39 does not fulfill the requirement of inventive step in the sense of Article 33(3) PCT:

- 3.1 Document D2 discloses a method of distributing rights-managed media data items in a peer-to-peer network (par. [3]; fig.1) comprising:
- receiving a request for a media data item at a central system from a user in the peer-to-peer network (par. [13]);
 - deriving a list of sources of the media data item in the peer-to-peer network (par. [21]); characterised by determining the relative priorities of the sources of the media data item in the list (par. [27]);
 - supplying the list of sources of the media data item and the routing information to the requesting user (par. [13]).

3.2 The subject matter of claim 39 differs from the disclosure of document D1 in that the relative priorities of the sources of the media data item in the list are determined based on the network service provider of the requester and the network service provider of the or each source;

3.3 The resulting technical problem is how to reduce load in Internet exchange nodes.

3.4 In order to solve the technical problem a person skilled in the art of communication networks would use a hint given in document D2 (par. [27]), where it is disclosed that the relative priorities of the sources of the media data item in the list are determined based on network criteria, e.g. based on IP address or on topographical distance between the requester and each source. Thus, no inventive step approach is required for the skilled person to come to conclusion that, in order to solve the above-mentioned technical problem, the relative priorities of the sources of the media data item in the list are to be determined based on the network service provider of the requester and the network service provider of the or each source.

Consequently, the subject-matter of claim 39 does not involve an inventive step.

- 4 Dependent claims 2-38 and 40-42 do not contain any features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of novelty and/or inventive step, the reasons being as follows:

- 4.1 The additional features of claims 2-38 and 40-42 represent minor implementation details.

Re Item VII

Certain defects in the international application (form or content)

- 1 **The independent claims are not correctly in the two-part form** in accordance with Rule 6.3(b) PCT, which in the present case would be appropriate, with those features known in combination from the prior art (document D2) being placed in the preamble (Rule 6.3(b)(i) PCT) and with the remaining features being included in the characterising part (Rule 6.3(b)(ii) PCT).
- 2 **The features of the claims are not provided with reference signs** placed in parentheses to increase the intelligibility of the claims (Rule 6.2(b) PCT). This applies to both the preamble and the characterising portion (see the Guidelines, par. 5.11).
- 3 **The documents D1 and D2 are not identified in the description** and their relevant content is not indicated (Rule 5.1(a)(ii) PCT). Furthermore, following from the disclosure of D1 and D2, the statement indicating the technical problem to be solved does not take into account the requirements of Rule 5.1(a)(iii) PCT (see also the Guidelines, par. 4.05).
- 4 There is a minor grammatical error in claim 39 (line 7, last two words).

Re Item VIII

Certain observations on the international application (clarity, see Article 6 PCT)

- 1 The application comprises **multiple independent claims** of the same category and therefore does not meet the requirement of conciseness (Guidelines, par. 5.42). Thus, a single independent claim should be used per category (Guidelines, par. 5.14).

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- 2 Claim 1 (lines 24-25) is due to the term "**preferably**" not clear because it is not clear whether the statements following the term belong to the scope of protection or not.
- 3 Claims 10-11, 24, 27, 33, and 37 are unclear because they try to define a method by a data structure. **A data structure cannot define a method claim**, mainly because it does not include any method steps.
- 4 Claim 20 is unclear because it tries to define **a method by apparatus features**.
- 5 There is **no antecedence** for "the routing information", "the requester", and "the requesting user" in claim 39 (lines 7, 9, and 10).